

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

1999 NOV 19 PM 3 45

CONSUMER ADVOCATE DIVISION )  
v. )  
UNITED TELEPHONE-SOUTHEAST, )  
INC. (UNITED TELEPHONE- )  
SOUTHEAST, INC. 1999 ANNUAL PRICE )  
REGULATION PLAN) )

DOCKET NO. 99-00798

OFFICE OF THE  
EXECUTIVE SECRETARY

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COMPLAINT OR PETITION TO INTERVENE

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Comes the Consumer Advocate Division of the Office of Attorney General, pursuant to Tenn. Code Ann. §§ 65-4-118; 65-2-101 (2); 65-2-103; 65-2-107; 65-5-210 (a); 65-5-210 (b); 4-5-310 and Rule 1220-1-1-.05(1) of the Tennessee Regulatory Authority, and respectfully complains and petitions to intervene in the above-referenced proceeding in order to represent the interests of Tennessee consumers.

The main purpose of this Complaint and/or Petition is to ensure that the Consumer Advocate Division does not waive any rights or issues regarding Docket No. 98-00626, United Telephone-Southeast, Inc.'s 1998 Price regulation Plan, in which the Consumer Advocate Division intervened. A review of the tariff setting forth the 1999 Price Regulation Plan shows that United Telephone is not increasing its rates. The Consumer Advocate Division, however, maintains that Tenn. Code Ann. § 65-5-209(e) requires a rate reduction. In addition, the proposed plan still fails to properly impute revenues from directory assistance and yellow pages revenues.

The Consumer Advocate Division petitions and complains as follows:

1. The Consumer Advocate Division of the Office of the Attorney General is authorized by Tenn. Code Ann. § 65-4-118 to initiate or participate or intervene in proceedings to represent the interests of Tennessee consumers in accordance with the Uniform Administrative Procedures Act (UAPA). The Division's powers with respect to price regulation plan proceedings are preserved in Tenn. Code Ann. § 65-5-210 (b).
2. United Telephone Southeast (UTSE) is a telecommunications utility regulated by the Tennessee Regulatory Authority (TRA) pursuant to Tenn. Code Ann. § 65-4-101. Its normal address for service of legal documents is 14111 Capital Boulevard, Wake Forest, NC 27587-5900, and its corporate legal counsel is Mr. James B. Wright.
3. The UAPA provides that contested case intervention is handled in accordance with Tenn. Code Ann. § 4-5-310.
4. The UAPA in Tenn. Code Ann. § 4-5-103 (b) further provides that "compliance with the procedures prescribed by this chapter does not obviate the necessity of complying with procedures prescribed by other provisions of this code."
5. That procedures prescribed by other provisions of the code include the provisions of Tenn. Code Ann. § 65-2-101 (2) as follows:

"Contested case" means all proceedings before the authority in which the legal rights, duties, or privileges of specific parties are determined after a hearing before the authority; provided, that the fixing of rates shall be deemed a contested case rather than a rule-making proceeding;

As a result this proceeding, where UTSE seeks to have its rates fixed, should be a contested case proceeding.

6. That the proceeding in the above referenced docket is one of all proceedings before the authority in which the legal rights, duties or privileges of United Telephone Southeast and Tennessee consumers will be determined by the fixing of rates and that said proceeding is a contested case proceeding.
7. That in the alternative the Consumer Advocate Division in accordance with Tenn. Code Ann. §§ 65-5-210 (a) and (b) brings a contested case against United Telephone Southeast and that the Tennessee Regulatory Authority has original jurisdiction and must resolve contested issues of fact or law regarding the United Telephone Southeast price regulation plan pursuant to Tenn. Code Ann. § 65-5-210 (a).
8. Tennessee consumers have a right, a privilege and a duty to pay only just and reasonable and affordable rates pursuant to Tenn. Code Ann. §§ 65-4-122; 65-4-123; 65-5-208; 65-5-209.
9. That UTSE is charging rates and proposes to charge rates in excess of those which are just and reasonable and affordable and that the rights, privileges and duties of Tennessee consumers and UTSE regarding service at the excessive extortionate rates will be affected by the decision in this proceeding.
10. That UTSE seeks to charge an amount in excess of rates which are just, reasonable and affordable, as defined by Tenn. Code Ann. § 65-5-209, excluding excessive and discriminatory rates which are already the subject of appeal. Upon information and belief it appears that UTSE has failed to impute revenues from its directory assistance operations to the benefit of consumers as provided by existing policy and the last order applicable to it prior to its price regulation plan.

11. That charging, collecting or receiving more than a just and reasonable rate of toll or compensation for service in this state, is prohibited and declared unlawful pursuant to Tenn. Code Ann. § 65-4-122 (b) and UTSE's rates for basic and non-basic services are in excess of those permitted by Tenn. Code Ann. §§ 65-5-209 and 65-5-208.
12. That the Consumer Advocate Division is currently appealing previous decisions regarding some of the rates for ABC Centrex Services, directory assistance, and the withholding of other ABC services from new customers and does not waive contesting these matters with respect to UTSE's current filing. The Consumer Advocate Division respectfully contends that UTSE's rate increases and charges for these and basic services is in contravention of law.
13. That Tenn. Code Ann. § 65-2-107 provides:

Parties to contested cases.  
All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case.
14. That the Consumer Advocate Division has a right under the provisions of the laws applicable to the authority to appear and be heard.
15. The rates proposed by UTSE will cause irreparable harm to those consumers who may leave the system before this cause is resolved and a substantial number of those consumers will not be found for the purposes of refunding any sums extortionately charged to them.
16. That the UTSE tariffs are contrary to, inconsistent with, or in contravention of law and

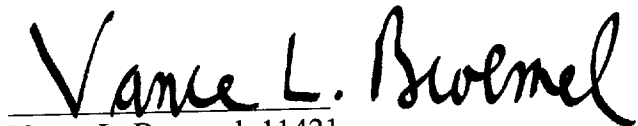
the Consumer Advocate Division is likely to succeed on the merits and therefore the UTSE tariffs should be suspended.

17. The Consumer Advocate Division contends that the statutory adjustment formula contained in Tenn. Code Ann. § 65-5-209 requires a \$432,553.20 reduction in basic and non-basic service rates and that UTSE's proposed rates do not implement the reductions in rates.

Wherefore the Consumer Advocate Division prays that the Tennessee Regulatory Authority suspend the United Telephone Southeast tariff filing which charges rates in excess of that allowed by law and deny the rates proposed by the company.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority disallow the directory assistance charges, ABC Centrex increases and other charges and practices which are the subject of appeal and to grant such other relief as is just.

Respectfully submitted,

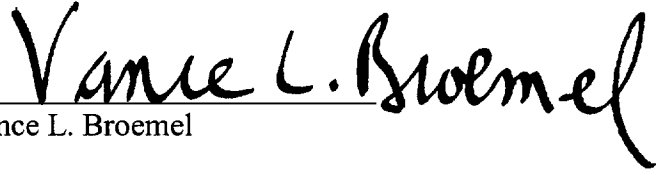


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#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint or Petition has been faxed and or mailed postage prepaid to the parties listed below this 19th day of November, 1999.

James B. Wright, Esq.  
United Telephone-Southeast, Inc.  
14111 Capital Blvd.  
Wake Forest, NC 27587-5900

  
Vance L. Broemel